

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1399 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RA PARMAR

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MS MAMTA R VYAS for Petitioner
Mr V.M.Pancholi, AGP, instructed by
M.G.Doshit & Co. for Respondent No. 1
DS AFF.NOT FILED (R) for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has prayed for the arrears of difference of salary for the period between 3.1.1971 and 6.5.1981 during which period the petitioner was not actually promoted as Armed Police Sub-Inspector. The

petitioner has also prayed for a direction to consider the case of the petitioner for the promotion to the post of Armed Police Inspector.

2 The petitioner was recruited as a Mounted Constable in the Mounted Police Force on 1-11-1950 and was thereafter promoted to the post of Mounted Head Constable Grade II and Mounted Head Constable Grade-I according to his seniority and as per the relevant Rules.

The petitioner was promoted as Mounted Police Sub Inspector with effect from 6.5.1981. It appears that one A.S.Shekhatav was promoted as Mounted P.S.I. with effect from 3-1-1971. The petitioner made a representation that since A.S.Shekhatav was junior to the petitioner in the lower cadre, the petitioner should be promoted with effect from the same date on which A.S.Shekhatav was promoted as Mounted P.S.I. Accordingly, that representation was accepted by the Director General of Police, who passed the order dated 30-9-1985 (Annexure-A) promoting the petitioner as Mounted P.S.I. with deemed date of 3-1-1971 and placing the petitioner above A.S.Shekhatav in the seniority list of Mountes PSIs. The petitioner's notional pay was accordingly fixed in the cadre of Mounted PSI and increments were also granted to the petitioner from 3-1-1971.

3. By order dated 23-11-85 (Annexure-C), the Director General of Police instructed the concerned D.S.P. not to pay the petitioner arrears of difference of salary, but only to fix the notional pay on the basis of deemed date in the cadre of Mounted PSI. The D.S.P., Palanpur, accordingly passed the order dated 28-1-1986 (Annexure-D) to pay the petitioner difference of salary from 3.1.1971 to 6.5.1981.

4. In praye clause (c), the petitioner has also prayed for a direction to the respondents to promote the petitioner to the cadre of Mounted P.I. with deemed date of A.S.Shekhatav.

5. As regards the petitioner's prayer for the arrears of difference of salary for the period from 3.1.1971 to 6.5.1981, the respondents have resisted the claim of the petitioner by filing affidavit-in-reply filed by Mr P.C.Pande, Deputy Inspector General of Police (Administration), wherein reliance is placed on the Government Circular dated 30.3.1970, laying down, inter alia, as under:-

"In the cases in which supersession of a Government servant for promotion to a higher post

is considered by higher authorities to be unjustified and such authorities having powers to set aside the orders of supersession do so, such Government servant should be deemed to have been promoted but for his wrongful supersession, that is from the date from which his juniors were promoted. On restoration of his seniority, the period from such deemed supersession date till the date of his actual promotion should count for the purpose of pay fixation on the promotion post but no arrears of pay for that period on that account should be paid to him."

It is further mentioned that similar circular dated 10.3.1960, issued by the Bombay State had come up for consideration before the Apex Court in State of Maharashtra Vs. Vinayak Kalamkar reported in AIR 1977 SC 505.

6 The underlying principle of the aforesaid circular is obvious that when an employee has been found to be wrongly superseded and thereafter promoted with a deemed date, he should be given benefit of notional pay between the deemed date of promotion and the date of actual promotion, but he should not be paid the arrears of difference of salary as he had not worked on the higher post during the relevant period. In view of the aforesaid circular dated 30.3.1970 and the aforesaid decision of the Apex Court, prayers 17(a) and 17(b) of the petition for quashing the impugned orders dated 23.11.1985 and 8.1.1986 (Annexures C & D respectively) as well as for direction to the respondents to give financial benefit of arrears of difference of salary to the petitioner from 3.1.1971 to 6.5.1981 cannot be granted.

7. The petitioner has stated in para 12 of the petition that the petitioner had made a grievance against the promotion of Mr Shekhavat in 1983 and made a representation to the Director General of Police, who informed the petitioner by his letter dated 12.12.1985 that the promotion of the petitioner to the post of Mounted PI is in process, but as there was a case in the Baroda Civil Court, the promotion of the petitioner to the post of Mounted P.I. was not possible.

8 At the hearing of this petition today, Mr V.M.Pancholi has sought leave to produce on record original order dated 12.8.1999 from the Inspector General of Police, Gujarat State, by which the petitioner is ordered to be promoted to the post of Armed Police

Inspector with the deemed date of 23.4.1983. However, the petitioner is not to be paid any difference of arrears of salary on account of such promotion.

9 The learned counsel for the petitioner has made a grievance that again the petitioner is being denied the arrears of difference of salary on account of inaction on the part of the respondents.

This Court is not inclined to entertain this grievance for the same reasons which are applicable for not giving the petitioner the relief of arrears of difference of salary during the period when the petitioner was not granted the promotion to the post of Armed Police Sub-Inspector. Secondly, the petitioner joined the State of Gujarat as a party-respondent at a later stage in the year 1999 and therefore also this Court is not inclined to grant relief of arrears of difference of salary on the post of Mounted Police Inspector for the period between 23.4.1983 and the date of petitioner's retirement. In view of the above, nothing further survives in the petition.

11 Accordingly the petition is dismissed in respect of prayers A & B. Petition does not survive in respect of prayer "C".

However, it is clarified that the petitioner will be given the benefit of notional pay fixation in the cadre of Unarmed Police Inspector with effect from 23.4.1983 till the date of his retirement and accordingly the petitioner's pension and other retiral benefits on that basis. The arrears of difference of pension will be paid to the petitioner on that basis wtihin three months from the date of receipt of the writ of this Court or a certified copy of the order of this judgement whichever is earlier.

The petitioner is disposed of in the aforesaid terms.
